

# EXAMINATION DIVISION



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## STATUTORY AUTHORITY

The Examination Division is responsible for examining, investigating, and supervising over 5,000 licensees and registrants under the following consumer finance statutes:

- the Consumer Financial Services Act;
- the Credit Card Act;
- the Mortgage Brokers, Lenders, and Servicers Licensing Act;
- the Motor Vehicle Sales Finance Act;
- the Regulatory Loan Act;
- the Sale of Checks Act; and
- the Secondary Mortgage Loan Act.

The division examines and supervises non-depository licensees and registrants to ensure that they operate safely, responsibly, and in compliance with applicable law.

The division's other responsibilities include:

- initiating enforcement actions against licensees and registrants based upon the results of the examinations and investigations conducted under the statutes noted above;
- analyzing mandated filings of annual reports and financial statements by non-depository licensees and registrants; and
- assisting with numerous requests made under the Freedom of Information Act for annual reports and financial statements.

## CONSUMER FINANCE STATUTES

### CONSUMER FINANCIAL SERVICES ACT

The Consumer Financial Services Act, Act No. 161 of the Public Acts of 1988, as amended, provides for the licensing and regulation of institutions which provide a variety of financial services, and eliminates the need to acquire a separate license for each activity. A "Class II" license authorizes services under the Regulatory Loan Act, the Motor Vehicle Sales Finance Act, the Secondary Mortgage Loan Act, and the Credit Card Act. A "Class I" license authorizes services under the Sale of Checks Act and the Mortgage Brokers, Lenders, and Servicers Licensing Act in addition to the authorities provided under a Class II license.

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### **CREDIT CARD ACT**

The Credit Card Act, Act No. 379 of the Public Acts of 1984, as amended, authorizes the licensing and regulation of non-depository issuers of credit cards.

### **MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT**

The Mortgage Brokers, Lenders, and Servicers Licensing Act, Act No. 173 of the Public Acts of 1987, as amended, provides for licensing, registration, and regulation of mortgage brokers, mortgage lenders, and mortgage servicers. The act pertains to loans secured by first mortgages or land contracts covering real property located in the state of Michigan, which is used, or improved to be used, as a dwelling and designed for occupancy by four or fewer families.

### **MOTOR VEHICLE SALES FINANCE ACT**

The Motor Vehicle Sales Finance Act, Act No. 27 of the Public Acts of 1950, as amended, regulates certain installment sales of motor vehicles. It provides for licensing and regulation of both the installment sellers, who are motor vehicle dealers originating installment sales contracts, and sales finance companies, the financial institutions that purchase these contracts from the dealers.

### **REGULATORY LOAN ACT**

The Regulatory Loan Act of 1963, Act No. 21 of the Public Acts of 1939, as amended (successor to Act No. 317 of the Public Acts of 1921, the Small Loan Act), authorizes the licensing and regulation of entities which make personal loans to consumers, other than those secured by real estate.

### **SALE OF CHECKS ACT**

The Sale of Checks Act, Act No. 136 of the Public Acts of 1960, as amended, authorizes the licensing

and regulation of the business of selling and issuing travelers checks, drafts, and money orders as a service or for a fee. The act also regulates telegraph companies which transfer funds by wire.

### **SECONDARY MORTGAGE LOAN ACT**

The Secondary Mortgage Loan Act, Act No. 125 of the Public Acts of 1981, as amended, authorizes the licensing, registration, and regulation of entities which broker, make, or service secondary mortgage loans used for personal, family, or household purposes.

## **EXAMINATION AND SUPERVISION**

The division conducted examinations and/or investigations in 1998 under all consumer finance statutes listed above, except the Credit Card Act.

With an ever-increasing population of non-depository licensees and registrants to supervise, the division has implemented new methods designed to more efficiently supervise the population. In this regard, the division altered its method of conducting examinations and investigations of large, complex financial institutions. In the past, these were conducted without advance notification being given to the licensee or registrant. In 1998, the division began notifying large, complex institutions of planned examinations and requesting examination-related information in advance to more efficiently conduct the examinations. This process has resulted in examinations of these institutions being conducted both on- and off-site.

In 1998 the division conducted an increased number of off-site examinations, in an effort to more effectively supervise financial institutions which do not have a physical presence within the state and which had a limited amount of Michigan activity.

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## ENFORCEMENT ACTIONS

As a result of examinations and investigations conducted by the division, four enforcement actions were commenced during 1998. The status of these actions are:

- Two closed.
  - One as a result of the company surrendering its license under the Mortgage Brokers, Lenders, and Servicers Licensing Act.
  - One with the Commissioner of the Financial Institutions Bureau ordering Commercial Lending Corporation, William Rankin, and any employees or agents thereof, to immediately cease and desist from conducting business as a mortgage broker without first obtaining a license or registering under the Mortgage Brokers, Lenders, and Servicers Licensing Act.
- Two pending.

In process from a previous year, was one enforcement action.

The year also brought about the culmination of four enforcement actions, which had been commenced in earlier years. These actions resulted in:

- Ralph R. Roberts Real Estate, Inc. admitting violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act, agreeing to pay a civil fine of \$14,525.00 and investigation costs of \$8,100.00 to the Financial Institutions Bureau, agreeing to immediately surrender its mortgage broker registration certificate, and agreeing to withdraw any and all applications previously submitted to the Financial Institutions Bureau for licensure pursuant to the Mortgage Brokers, Lenders, and Servicers Licensing Act and/or the Secondary Mortgage Loan Act.
- Absolute Acceptance Mortgage Company, L.L.C. admitting violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act, agreeing to make refunds to consumers, and agreeing to pay a civil fine of \$2,000.00 and investigation costs of \$5,500.00 to the Financial Institutions Bureau.
- Benson Group Financial Corporation admitting violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act, agreeing to make refunds to consumers, and agreeing to pay a civil fine of \$5,011.00 and investigation costs of \$3,600.00 to the Financial Institutions Bureau.
- The Commissioner of the Financial Institutions Bureau denying the application of Mortgage Sources, Inc. for licensure under the Mortgage Brokers, Lenders, and Servicers Licensing Act, revoking the license of Mortgage Sources, Inc. under the Secondary Mortgage Loan Act, and ordering payment to the Financial Institutions Bureau of a civil fine of \$15,000.00.

## POLICY BULLETINS

The Bureau issued two Mortgage Bulletins in 1998, one on mortgage prepayment penalty restrictions and the other on rights of first refusal to provide additional financing.

Mortgage Bulletin 1998-01, issued November 6, 1998, provides the following Bureau positions on prepayment penalty restrictions:

- Section 501(a)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980 does not preempt MCL 438.31c(2)(c). As a result, lenders who make loans secured by first mortgages on residential property, except for certain alternative

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mortgage transactions, are prohibited from charging Michigan consumers prepayment fees or penalties outside those allowed by MCL 438.31c(2)(c).

- The provisions of MCL 438.31c(2)(c) that limit the charging of prepayment fees and penalties are preempted by the Alternative Mortgage Parity Act of 1982, if the lender is a “housing creditor” and the extension of credit is made in compliance with the Alternative Mortgage Parity Act and other applicable regulations.

Mortgage Bulletin 1998-02, issued November 12, 1998, provides the following Bureau positions on rights of first refusal to provide additional financing:

- It is unlawful in the State of Michigan for an entity licensed or registered under the Mortgage Brokers, Lenders, and Servicers Licensing Act, Act No. 173, P.A. 1987, as amended (Act), to use a document in conducting licensable business activity that purports to grant to the licensee or registrant a “right of first refusal to provide additional financing.”
- The “right of first refusal to provide additional financing” document requires consumers to deal exclusively with a particular licensee or registrant in obtaining financial services secured by real property.
- The representation by a licensee or registrant that a “right of first refusal to provide additional financing” document is a recordable contract, is an act that deceives consumers, leading them to believe that they have entered into a valid agreement.
- A licensee or registrant that uses an exclusive business agreement will be subject to an administrative action against its license or

registration for engaging in conduct prohibited by Section 22 of the Act.

The Bulletins are available on the Bureau web site, located at [www.cis.state.mi.us/fib](http://www.cis.state.mi.us/fib).

## OTHER COMMUNICATIONS

The division began publishing a First Mortgage Regulatory Newsletter in 1998. The purpose of the newsletter is to provide a means for informing licensees and registrants under the Mortgage Brokers, Lenders, and Servicers Licensing Act about various problems or issues which have come to our attention through examinations. In this way, licensees and registrants can learn from the mistakes of others and take appropriate action to correct any similar deficiencies noted in their operations. Some of the topics covered in the 1998 newsletters are:

- exclusive agreements;
- back-dating of documents;
- advertising;
- individual investors;
- escrow account surpluses;
- replies to examination reports;
- obtaining federal regulations;
- net worth requirements;
- policies and procedures manuals;
- assignment of mortgages; and
- preparedness for the year 2000.

Positive feedback has been received by the division in response to the two newsletters issued in 1998. Accordingly, the division plans to continue the use of the Newsletter. Copies of the newsletters may be obtained from the Bureau’s web site, located at [www.cis.state.mi.us/fib](http://www.cis.state.mi.us/fib).

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## **Y2K COMPLIANCE MONITORING**

The division monitors its licensees and registrants for compliance with the year 2000 computer problem through information obtained through annual report filings and through the examination process.

## **STAFF TRAINING**

The division is committed to maintaining a highly competent examination and office staff. One of the ways the division accomplishes this is through appropriate staff training. In 1998, the examination staff attended training in areas such as mortgage fraud, federal regulations, testifying, and management skills.

## **PROFESSIONAL ORGANIZATIONS**

Division personnel take an active role in the regulatory community. At the Michigan Automobile Dealer Association's annual conference, Robert Andrews spoke about spot delivery. (Spot delivery occurs when a motor vehicle is delivered to the consumer prior to obtaining formal loan approval by the financing institution.) Ann Gaultney is involved in the National Association of Consumer Credit Administrators (NACCA). In 1998, she held the position of Second Vice President of NACCA and was responsible for organizing the annual conference held in San Diego, California.

## **THE MORTGAGE INDUSTRY IN REVIEW**

The sub-prime mortgage industry, as well as entities making high loan-to-value mortgage loans, braved rough seas in 1998. Some of these lenders encountered difficulty obtaining funding for mortgage loans due to reductions or freezes in warehouse lines of credit, resulting in the failure of certain financial institutions.

However, not all was bad in 1998. While certain lenders may have faced difficulties, others flourished. As a matter of fact, the number of entities licensed or registered with the Bureau to make mortgage loans has never been higher.

## **INFORMATION AVAILABLE ON THE FIB WEB SITE**

A wealth of information is available on the Bureau's web site, located at [www.cis.state.mi.us/fib](http://www.cis.state.mi.us/fib). Such information includes:

- copies of the consumer finance statutes;
- answers to frequently asked questions;
- policy bulletins;
- newsletters issued by the division;
- press releases; and
- forms for filing 1998 annual reports and financial statements.